

## REMARKS

Before entry of this Amendment, claims 1-19 and 21-27 were pending in the application. After entry of this Amendment claims 1-19 and 21-27 remain pending under examination. Claims 20 and 28-39 have been cancelled. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

Applicant has carefully considered the Final Examiner's Action of May 16, 2008, and the references cited therein. The following is a brief summary of the Final Action. Claims 1-9 and 11-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sloane (USP 5,918,211). Claims 10, 14-19 and 21-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sloane in view of Humble (GB 2,193,000).

In accordance with 37 C.F.R. § 1.116(b)(2), applicant proposes to amend claim 1 to correct a typographical error and earnestly requests entry of said amendment as presenting claim 1 in better form for consideration on appeal.

For the reasons explained below, applicant respectfully traverses the rejection of claims 1-9 and 11-13 under 35 U.S.C. § 103(a) as being unpatentable over Sloane.

Applicant's independent claim 1 calls for a system for providing cross-marketing promotional offers to a customer. Claim 1 requires a smart cart that defines a customer-storage area used by the customer to store products while shopping. Claim 1 further calls for the smart cart to further comprise an item evaluator configured to measure a physical parameter of the products placed in the customer storage area. As explained at lines 1 – 4 on page 16 of applicant's specification, by "physical parameter" is meant an objective physical attribute such as the product's weight. This physical

parameter is cross-referenced with the product information to verify that the actual product corresponds to the product referenced in the product information.

Independent claim 11 is drawn to the individual smart carts and requires a customer storage area that is defined in the cart and is used by the customer to store products while shopping. The smart cart includes a smart cart computer and an item evaluator. The smart cart computer is configured to use the item evaluator to measure a physical parameter of the products placed in the customer storage area and to compare the measured physical parameters with a known value to verify that the products placed into the cart correspond to the products identified in the product information.

The method and apparatus according to Sloane is focused primarily on the use of a portable bar code scanner used by a customer to scan products as the customer shops. The bar code scanner may be held by the customer, or attached to a shopping cart, and is used to retrieve a bar code provided on a product. The scanner operates in conjunction with a computer/controller 12, and the bar code may be used for, among other things, to provide the customer with an indication that a promotion is provided for the product. The computer/controller also sends a product description and price information on the scanned product to the bar code scanner.

Sloane does not describe or otherwise suggest a smart cart that includes an item evaluator that measures a physical parameter of products placed in the cart, whereby the physical parameter is cross-referenced with product information to verify that the scanned product actually corresponds to the product referenced in the product information. Accordingly, claim 1 cannot be rendered unpatentable by Sloane. It is

respectfully submitted that independent claim 11 patentably distinguishes over Sloane for essentially the same reason as claim 1.

Claims 2 through 9 only further patentably distinguish the system of claim 1, and claims 12 and 13 further patentably distinguish the smart cart of claim 11. Accordingly, claims 2 through 9, 12 and 13 are allowable over Sloane for at least the reasons claim 1 and claim 11 is respectively allowable.

At lines 1-9 of paragraph 6a on page 11 of the May 2008 Final Office Action, it is contended that Sloane discloses “an item evaluator configured to measure a physical parameter of the products placed in the customer storage area” which is “cross-referenced with the product information to verify that the actual product corresponds to the product referenced in the product information” because (emphasis added):

Sloane explicitly discloses a video camera as a security device that take (sic) a **video image (i.e., a physical parameter)** of the product being placed into the cart and compares it with stored image information about the scanned product to prevent fraud.

However, applicant respectfully submits that the assumption that a **two-dimensional video image** of a three-dimensional product constitutes a physical parameter of that product is clearly erroneous. Applicant’s specification gives the product’s weight as an example of a product’s physical parameter. Thus, a physical parameter must be an objectively immutable attribute such as the product’s weight or the volume occupied by the product, both of which being fixed and not subject to distortion. An image is merely a representation of a product rather than a physical parameter of that product. An image on a two-dimensional video screen is subject to distortion and is subject to a particular scale as well as the use of perspective to fool the

eye into observing a two-dimensional image and believing that such image has three-dimensional depth. A physical parameter of the product by contrast is not subject to such distortion.

Applicant therefore respectfully submits that claims 1-9 and 11-13 are patentable under 35 U.S.C. § 103(a) over Sloane.

For the reasons explained below, applicant respectfully traverses the rejection of claims 10, 14-19 and 21-27 under 35 U.S.C. § 103(a) as being unpatentable over Sloane in view of Humble.

Independent claim 18 is drawn to a network enabled smart cart and calls for a customer storage area defined in the smart cart and includes a scale. In other words, the scale is a component of the cart, as a scale is in claims 10 and 14 – 17. Claim 18 also requires a customer interface and a first computer associated with the customer interface and configured to establish a communication connection to a third party computer so that a customer can directly communicate with a third party via the customer interface.

The Humble reference describes a check-out system that incorporates two different **floor-installed** weighing scales 16, 20 used at the check-out location. The shopping cart is placed on the first **floor-installed** so-called “in cart” scale 16 and as an article is taken from the shopping cart, the system makes an immediate determination of the decrement in weight associated with the removal of the article. Upon scanning the article UPC code and obtaining a known weight from the computer 24, the system compares the decremented weight with the computer provided weight to determine any discrepancy between the compared weights. A second level comparison is done with

the **floor-installed** so-called “out cart” scale 20. As the individual removed articles are transferred after scanning to the second cart 22, a second comparison can be made between **floor-installed** scale 16 and the scanned UPC weights.

The Humble reference does not teach or disclose an item evaluator, such as a scale or other device, that is configured in the shopping cart. The **floor-installed** scales in the Humble reference are provided at the check-out station, and the cart must be moved onto the scale rather than provisions being made so that the scale can be carried by the cart. The Humble cart does not include an item evaluator that is configured to measure a physical parameter of products placed into the storage area of the Humble cart, whereby the measured parameter can be immediately cross-referenced with product information to verify that the actual product corresponds to the product referenced in the product information. Yet these very features absent in the combination of Sloane and Humble are called for in independent claims 1, 11 and 18. Accordingly, even if the check-out system of the Humble reference were combined with Sloane, the resulting combination is still not in accordance with the system of claim 1, the smart cart of claim 11 or the network enabled smart cart of claim 18.

Applicant's argument about claim 18 and the deficiency of the Sloane and Humble combination concerning the absence of a scale in the shopping cart rather than floor-installed at a point-of-sale terminal as in Humble was addressed at lines 1-11 of paragraph 6c on page 12 of the May 2008 Final Office Action as follows:

The Examiner notes that Humble discloses of weight to verify a product's identity had been used for years. Humble also discloses comparing the weight of each individual product being placed into bagging shopping cart at the point-of-sale terminal to insure the correct product was being bagged. This, combined with Sloane's disclosure of

measuring using the product parameters (image) to verify the correct product was being placed into the shopping cart while shopping would have rendered it obvious to one having ordinary skill in art to also use the scale to verify the item being placed in the shopping cart while the customer was shopping.

The first obvious problem with the above contention of the May 2008 Final Office Action is again the erroneous assertion of Sloane's disclosure of measuring using the physical product parameter under the assumption that an image is such a physical parameter of the product. Additionally, having a **floor-installed** scale at a point-of-sale terminal, after the customer already has put a product into the cart and carried it all around the store before checkout is manifestly substantially different than the smart cart described by applicants' claim 18. Moreover, given the substantial advantages and greater convenience of applicant's smart cart, the failure to find any suggestion in either Sloane or Humble speaks to the nonobviousness of applicant's claim 18.

The rejection of claim 18 apparently was based on the premise that the store central computer disclosed in Sloane corresponds to the third party computer of claim 18. However, the store central computer in Sloane is not a third party computer that is remote from the shopping establishment. As described in the applicant's specification at, for example, page 19, a remote communication can be established, for example, using an IP address associated with a remote third-party computer 25, and a customer in the retail store using the smart cart can use the customer interface to establish this communication link with a third party computer 25 that is monitored by a person outside of the retail store. The person outside of the store can directly communicate with the person inside the store via the customer interface for any reason, for example to add an

item to the customer's shopping list, and so forth. This capability is completely lacking from the system of Sloane.

Regarding applicant's above argument with respect to claim 18, lines 5-12 of paragraph 6b on page 11 of the May 2008 Final Office Action state:

Sloane allows the customer to connect through the Internet to retrieve and save coupons and product information. This product information/coupons can then be retrieved while the customer is shopping. It is implied that the appropriate connection are made. Furthermore, since Sloane explicitly discloses that the consumer interface is in radio frequency communication with the store computer and/or the point-of-sale terminals, it is inherent that connection to other (third-party) computers could be made through the same radio frequency communications, as long as the third party computers have a radio frequency receiving means.

However, as explained at applicant's specification at page 19, lines 3 – 13, claim 18 requires "establishing a communication connection with a third party computer so that a customer can directly communicate with a third party via the customer interface." Sloane does not allow the customer, a human being, to communicate directly with another human being, the third party, via the customer interface. Voice and text telecommunication on the one hand and data telecommunication on the other hand being two different animals, Sloane's allowance of the customer to download information from another computer (data communication), rather than communicate with a third party individual person (voice and text telecommunication), fails to disclose the feature required by applicant's claim 18.

Accordingly, applicant respectfully submits that independent claims 1, 11 and 18 are allowable over Sloane alone or in combination with the Humble reference. Claims 10, 14 – 17, 19 and 27 – 27 are thus allowable for at least the reasons claims 1, 11 and

18 are allowable. Applicant therefore respectfully submits that claims 10, 14-19 and 21-27 are patentable under 35 U.S.C. § 103(a) over Sloane in view of Humble.

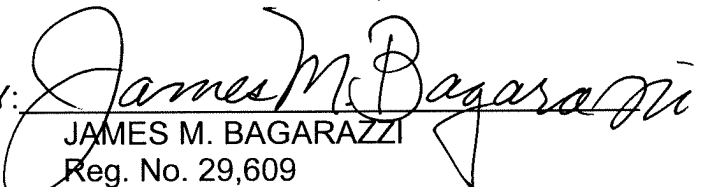
Applicant respectfully requests reconsideration and reexamination of claims 1-19 and 21-27, as presented herein, and submits that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

DORITY & MANNING, P.A.

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